IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL N0.390 OF 2003

The State of Maharashtra.] ..Appellant.
(Orig.Complainant)

Versus

Ashok Arjun Bhosale,]
Age-24 yrs. Occ.Service,]
R/o - Upper Indira Nagar,]
Chawl No.19/17, Bibvewadi,]
Pune.] ..Respondent.
(Orig.Accused)

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Mrs.U.V.Kejariwal, APP, for the Appellant-State.
Mr.S.G.Deshmukh, Adv. appointed for the Respondent.

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CORAM : R.M.S.KHANDEPARKAR, &
SMT.V.K.TAHILRAMANI, JJ.

DATED : OCTOBER 19, 2007.

DATE OF RESERVING THE ORDER : 12th October, 2007.
DATE OF PRONOUNCING THE ORDER: 19th October, 2007.

JUDGMENT (PER SMT.V.K.TAHILRAMANI, J.) :

1. Through this Appeal the Appellant-State of Maharashtra has challenged the judgment and order of acquittal dated 16.11.2002 passed by the learned IIIrd Ad-hoc Additional Sessions Judge, Pune in Sessions Case No.224 of 2002. By the said judgment and order the learned Sessions Judge acquitted the respondent-orig.accused under

Section 302 of IPC.

2. The prosecution story briefly stated is as under :-

. Mahadeo Rokade (deceased) was residing at Upper Indira Nagar Hutment area, Bibvewadi, Pune. The residence of the accused was adjoining to that of Mahadeo. There was dispute between the accused and the deceased on account of common wall between their house. The said dispute had occurred one and half years prior to the incident. On 21.4.2002 Mahadeo was sleeping infront of his house. It is the prosecution case that during the night between 21.4.2002 and 22.4.2002 at about 1:30 a.m., the accused assaulted Mahadeo on his head with a tile. The accused himself informed this fact to the police. The police went to the spot and sent the body of Mahadeo for post-mortem. After conducting the post-mortem, the Doctor opined that the death was due to ‘shock due to head injury’. Thereafter investigation commenced. After completion of investigation, charge-sheet came to be filed. In due course, the case was

committed to the Court of Session.

3. Charge came to be framed against the respondent-accused under Section 302 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the accused is that of total denial and false implication. After going through the evidence adduced by the prosecution, the learned Sessions Judge acquitted the respondent-accused of the charge under Section 302 of IPC. Hence this Appeal.

4. We have heard Mrs.Kejariwal, the learned APP for the State and Mr.S.G.Deshmukh, the learned Advocate appointed for the respondent-accused. We have also perused the judgment and order passed by the learned Sessions Judge as well as the entire record pertaining to this case. After anxiously considering the matter, we are of the opinion that the order of acquittal passed by the learned Sessions Judge does not call for any interference.

5. The present case rests only on

circumstantial evidence. There is no eye witness in the present case. The circumstance which has been relied upon by the prosecution is extra-judicial confession by the respondent-accused to PW-1 Balasaheb Oswal, PW-2 A.S. Pathan and PW-7 S.S.Adsul. Besides the circumstance of extra-judicial confession, the only other circumstance relied upon by the prosecution is motive. The prosecution has sought to prove motive on the basis of evidence of PW-5 Jivan Rokade, who is the son of the deceased.

6. We shall now proceed to deal with the first circumstance i.e. extra-judicial confession by the accused to PW-1 Balasaheb Oswal, PW-2 A.S. Pathan and PW-7 Suresh Adsul. The first witness who has deposed that the accused made an extra-judicial confession that he murdered Mahadeo Rokade is PW-1 Balasaheb Oswal. It is pertinent to note that this witness was sitting in the police chowky at the relevant time. It is his case that while he was sitting in the police chowky, the accused came there and shouted that he had committed murder. It is pertinent to note

that the said statement was not made to this witness, but, infact the statement was made by the accused to the police. The law is well settled that no reliance can be placed upon a confession made by an accused to the police. Hence this piece of evidence cannot help the prosecution in any manner.

7. The second witness who has deposed about extra-judicial confession by the accused is PW-2 A.S. Pathan. This witness has stated that on 22.4.2002 at about 1:30 a.m. when he was returning home, accused came running and the accused was shouting that he committed murder. However, on going through the cross-examination of this witness, we find that this statement made by this witness in his examination-in-chief is an omission. Thus, the evidence of this witness being an improvement is also of no use to the prosecution.

8. The last witness on the aspect of extra-judicial confession by the accused is PW-7 Suresh Adsul. This witness has deposed that when

he was present at the police chowky the accused entered the police chowky and disclosed to the police that he (accused) had hammered a big piece of tile on the head of Mahadeo Rokade while Mahadeo Rokade was sleeping infront of his house. On careful perusal of the testimony of this witness, it is seen that the confession has been made by the accused to the police and not to this witness. The law is very clear that a confession made by an accused to a police officer cannot be relied upon to convict him. Section 25 of the Evidence Act reads as under :-

> "**25. Confession to police officer not to be proved**.- No confession made to a police officer, shall be proved as against a person accused of any offence."

. Thus it is seen that as far as the aspect of extra-judicial confession by the accused to PW-1 Balasaheb Oswal and PW-7 Suresh Adsul is concerned the said evidence cannot be relied upon as it is hit by the provisions of Section 25 of

the Evidence Act. As far as the aspect of extra-judicial confession by the accused to PW-2 A.S. Pathan is concerned, the extra-judicial confession cannot be relied upon because it has been proved that the said averment by the witness in his examination-in-chief is an improvement.

9. The only other circumstance which the prosecution has sought to use against the respondent-accused is "motive". The only witness who has deposed on this aspect is PW-5 Jivan Rokade. Jivan Rokade, who is the son of the deceased Mahadeo has stated that, "There is a common wall between my house and the house of the accused. Before one and half years there was quarrel between the accused and we over the common wall". This witness has further stated that :

> "Over the dispute of common wall, the mother of accused had quarrel and assaulted my father on two occasions. The mother of accused was frequently abusing my father over dispute of common wall. The mother of accused

was giving threats that sooner or latter, they were going to take revenge against us".

. As far as the above statements are concerned, all these statements are improvements and in such case they have to be excluded from consideration.

10. As far as the averment of witness PW-5 Jivan Rokade that there was a dispute relating to the common wall between the house of the deceased and the accused, this witness has categorically stated that quarrel had taken place between the accused and them one and half years prior to the incident. From this, it is seen that the motive was not a recent motive, but, the said quarrel had occurred one and half years prior to the incident. The prosecution has relied on this incident in order to show that the accused had a motive to murder the deceased. Looking to the fact that the quarrel relating to the common wall had taken place one and half years prior to the incident, we are of the opinion that the motive cannot be said

to be a proximate one to the death of Mahadeo. Moreover, motive is the reason for prompting the intention which induces a person to do a particular act. Motive is relevant and important when dealing with the question of intention. In a case of murder, one always looks for the motive for commission of such a heinous crime. Proof of motive generally lends corroboration to the prosecution case. However, in the present case we find that the motive is too remote and there was no immediate reason for the accused to assault the deceased. In any event, motive by itself is not a very strong circumstance. In the absence of any other material, a person cannot be convicted only on the basis of motive. The learned Sessions Judge has taken all these aspects into consideration and has thereafter acquitted the accused.

11. Looking to the evidence on record, we are of the opinion that the view taken by the learned Sessions Judge is a reasonable and possible view.

12. It is well settled that if the view of

acquittal could have been reasonably arrived at, then mere circumstance that the lower Court would have taken a different view would be no ground to interfere. In this connection, there is no dearth of authorities but to eschew prolixity, we are referring to only two of them i.e. **AIR 1971 SC 66 Khedu Mohton and Ors. Vs. State of Bihar and C.Anthony Vs. K.G.Raghavan Nair, (2003) 1 SCC 1**.

. In the case of **C.Anthony**, the Supreme Court has observed that unless the findings of the trial Court are perverse or contrary to the material on record, the High Court cannot in Appeal substitute its findings, merely because another contrary opinion was possible on the basis of material on record. As stated earlier, the view taken by the learned Sessions Judge is a reasonable and possible view hence, no interference is called for.

13. In view of the above, the judgment and order of acquittal dated 16.11.2002 passed by the IIIrd Adhoc Additional Sessions Judge, Pune in Sessions Case No.224 of 2002 is confirmed. Appeal

is dismissed.

[R.M.S.KHANDEPARKAR,J.]

[SMT.V.K.TAHILRAMANI,J.]